

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 11-1559

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., on August 15, 2011, on the Administrative Appeal of Easton Point Marina, Inc., Meehan, LLC, Kathryn Meehan, and W. Lee Denny (“Appellants”). The Appellants are appealing a zoning abatement order issued by Talbot County, Maryland dated May 9, 2011. The abatement order contends that the use of the property is in violation of the Talbot County Code (“Code”). The Appellants contend that the use of the property, including the sale of alcoholic beverages, does not violate the Code. The property is located on 975 Port Street, Easton, Maryland 21601 in the Limited Industrial (LI) zone. The property owner is Easton Point Marina, Inc. The appeal is made in accordance with Chapter 190 Zoning, Article IX, §190-188 of the Talbot County Code.

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Rush Moody, Betty Crothers, and John Sewell. The Appellants were represented by Demetrios G. Kaouris, Esquire, Miles and Stockbridge, 101 Bay Street, Suite 2, Easton, Maryland 21601. Talbot County was represented by Michael L. Pullen, Esquire, County Attorney, Talbot County Office of Law, 11 North Washington Street, Easton, Maryland 21601. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and accepted as Board’s Exhibits as indicated:

1. Application for appeal.

2. Administrative appeal checklist.
3. Notice of intent to participate form.
4. Administrative appeal witness list.
5. Copy of portion of county tax map showing subject property.
6. Appeals Notice of Public Hearing.
7. Certificate of Publication from the Star-Democrat.
8. Notice of Hearing with attached list of nearby property owners.
9. Sign maintenance agreement.
10. Letter from the Critical Area Commission dated June 27, 2011.
11. Acknowledgement Form for Administrative Appeal.
12. Independent Procedures Disclosure and Acknowledgement Form.
13. Administrative Abatement Order dated May 9, 2011.
14. Administrative Abatement Order continuation sheet.
15. General Table of Land Uses.
16. Affidavit of Service.
17. Notice of Intent to Participate from Talbot County.
18. Appellants' Prehearing Statement.
19. Talbot County's Prehearing Statement.
20. Talbot County's Supplemental Exhibit List.
21. Affidavit of Service.
22. Easton Point Marina's Supplemental Exhibit List.
23. Talbot County's Supplemental Prehearing Statement.

Background

This appeal concerns the retail sale of alcoholic beverages in the County's Limited Industrial (LI) zone. Meehan, LLC currently holds a provisional Class D liquor license issued by the Board of Liquor License Commissioners, which authorizes the retail sale of beer and light wine for consumption on and off the premises, located at 975 Port St, Easton, Maryland (the "Property") in the LI zone.

The Property is owned by Easton Point Marina, Inc., and leased by Meehan, LLC, which operates a commercial marina on the site. The County zoning ordinance permits commercial marinas in the LI zone by special exception. In 1983, former owners of the Property requested the Board of Appeals (the "Board") to approve an expansion of the then-existing special exception for the marina use. The owners requested permission to provide food carryout service within the existing building on the Property. The Board approved that request by amending the existing special exception. That 1983 amendment (the "Zoning Approval") authorized expansion of the then-existing marina use by adding a food carryout service within the building. The Board made the Zoning Approval subject to the following express conditions:

The expansion will be contained entirely within the present building and will consist of an 8' x 12' area in the northwest corner of the existing marine store to be devoted to the preparation and sale of light foods and associated items. [The applicant] *may add beer and/or wine to the soft drinks but it is undecided at this time.* The overhanging counter (Applicants Exhibit No. 1) is for the operator convenience and display purposes only. *No food or refreshments will be consumed within the premises. No tables, chairs or counter stools will be provided.* (emphasis supplied)

[The applicant] had made provisions for adequate off street parking and will fully

comply with all applicable requirements of Section 19-8, Talbot County Code.

The snack bar will close at 6 p.m. each day and there are no plans for additional outdoor lighting.

The Board found as a fact that expanding the existing business by adding a carryout food service within the existing building and granting the Zoning Approval "... will have little, if any, impact on water supply or sanitary sewerage."

The Board imposed the following additional conditions on the Zoning Approval: (1)

Strict adherence to all applicable regulations of the Talbot County Code as amended from time to time; (2) Strict adherence to all applicable regulations of the Maryland Department of Health, Soil Conservation Agency, Environmental Agency and the State Fire Marshall. The Board's findings and these conditions are set forth in the Zoning Approval adopted by the Board in 1983 in Appeals No. 504.

In 2010 the County requested the Board to revoke the Zoning Approval based on allegations that Meehan, LLC had repeatedly violated the Zoning Approval over a number of years by illegally expanding the 8' x 12' area, illegally placing permanent inside and outside seating, providing seating and food and beverage service at an outside deck-bar, installing counters and stools, providing on-premises food and beverage consumption, and providing food and beverage service beyond 6:00 p.m. Additionally, the County alleged that Meehan, LLC violated the express conditions imposed upon the Zoning Approval by failing to strictly adhere to all applicable regulations of the County Code and with all applicable regulations of the Maryland Department of Health (since renamed the Maryland Department of Environment, or "MDE"). Easton Point Marina, Inc., and W. Lee Denney, individually, were also parties to the Board proceeding to revoke the Zoning Approval and were represented by counsel. The Board

scheduled a hearing on the County's request to revoke the Zoning Approval for January 10, 2011, at 7:30 p.m., in Appeal No. 504-R.

Several hours before the Board hearing, counsel representing the Property owner contacted the County and indicated that they wished to consent to revoke the Zoning Approval. Counsel for the County and Easton Point Marina, Inc., accordingly prepared a "Consent Order Revoking 1983 Amendment to Special Exception," which the Board executed at the parties' joint request. The Consent Order was signed by W. Lee Denney on behalf of the Property owner, Easton Point Marina, Inc., which had, when it purchased the Property, succeeded to the rights of the former owners under the 1983 Zoning Approval.

Before the Consent Order was presented to the Board for execution the County had indicated to counsel for Easton Point Marina, Inc., and W. Lee Denny, and later confirmed this publicly at the hearing, that it was the County's view that for the retail sale of alcohol to continue the Property must be in compliance with applicable zoning requirements in addition to holding a liquor license.

County Code § 11-8 C (the County's alcoholic beverage ordinance) provides: "Zoning restrictions. No license provided by this chapter shall be issued or utilized in a manner which will result in a violation of any zoning ordinance or other statutory land use restriction of Talbot County or the incorporated municipality in which the place of business proposed to be licensed is located."

After the Board's revocation of the Zoning Approval, Meehan, LLC continued the retail sale of alcoholic beverages on the Property. When it came time for the annual renewal (March-April, 2011) of the Class D alcoholic beverage license held by Meehan, LLC, the County

objected to the renewal based on § 11-8 C. The Board of Liquor License Commissioners declined to renew the license by a 2-1 vote. Appellants appealed that decision to the Circuit Court for Talbot County and the parties agreed to the issuance of a provisional Class D license allowing Meehan, LLC to continue to sell alcoholic beverages on the Property pending the outcome of the legal proceedings.

Meehan, LLC, and Easton Point Marina, Inc. argued before the Board of Liquor License Commissioners that they had not been given an opportunity to contest the County's claim that the retail sale of alcohol was not permitted in the LI zone. Additional discussion between the parties counsel resulted in an agreed procedure in which the County was to issue a new administrative abatement order, providing Meehan, LLC and Easton Point Marina, Inc., an opportunity to appeal that order and thereby to have the zoning issue decided administratively by this Board.

The County issued that Administrative Abatement Order dated May 9, 2011 (the "Order") which, among other things, ordered the Appellants to "immediately cease and permanently discontinue the retail sale of alcoholic beverages on the property...". Appellants noted a timely appeal to this Board from the issuance of that Order, asserting that the retail sale of alcoholic beverages from the Property does not violate the County Zoning or Alcoholic Beverage Ordinances.

Discussion

Appellants' claim is inconsistent with the revocation of the 1983 Zoning Approval. That Zoning Approval authorized carry-out food and beverage service with specific restrictions prohibiting on-premises consumption. Permitting retail sale and on-premises consumption of

alcohol, as of right, under the “Retail, incidental” land-use classification would, in effect, make the zoning approval process both unnecessary and redundant. The property owner could merely choose to do it. But marinas are permitted only by special exception in the LI zone and § 190-180 F (2) requires this Board to approve expansions and major amendments to special exceptions. The process for doing so is the same as for the original special exception approval. Appellants did not follow that process and cannot unilaterally expand or amend their special exception to permit on-premises consumption of alcoholic beverages without an application to amend their special exception, public notice, and a public hearing before this Board for review and approval, approval with conditions, or denial. Additionally, any proposed change of use would also need site plan approval, which was never requested or obtained.

In addition Appellants’ claim is inconsistent with the applicable County ordinance. The County’s Zoning Ordinance provides:

ARTICLE III, Land Uses

§ 190-16. General Table of Land Uses.

A. The following table establishes permitted uses, special exception uses and accessory uses in the zoning districts set forth in this article.

B. *All uses not listed in the table are prohibited except as provided below in Subsection C.*

C. The uses listed under the major use headings may be interpreted by the Planning Director, after a recommendation from the Planning Commission, to include other uses that have similar impacts to listed uses. The listed uses within the table which are subject to interpretation are those which are not in bold type.

D. This section shall not be interpreted to allow a use in one zoning district when the use in question is more closely related to another listed use that is allowed in other zoning districts.

The Table of Land Uses lists, permits, and regulates the retail sale of alcohol under “Retail, general.” The retail sale of alcohol is permitted outright in the County’s General Commercial Zone, Limited Commercial Zone, and is permitted by special exception in the Village Center and Village Center 2 Zones.

The same “Retail, general” listing the Table of Uses prohibits retail sale of alcohol in the LI zone. The express language of § 190-16 B is clear and unambiguous as applied to the undisputed facts, namely that the Property is in the LI zone and Meehan, LLC is selling alcohol at retail on the property for on-and-off-premises consumption pursuant to a Class D liquor license.

The Class D liquor license may be issued and used only if it is otherwise in compliance with existing zoning and other statutory land use restrictions:

Zoning restrictions. No license provided by this chapter shall be issued or utilized in a manner which will result in a violation of any zoning ordinance or other statutory land use restriction of Talbot County or the incorporated municipality in which the place of business proposed to be licensed is located. *County Code § 11-8 C*

This language is also clear and unambiguous and makes both issuance and use of any liquor license subject to County zoning and other land use restrictions. The retail sale of alcohol is prohibited in the County’s LI zone under the Table of Uses and § 190-116 C. Issuance and use of the Class D liquor license is subject to the County’s zoning and land use restrictions under § 11-8 C and therefore, the retail sale of alcohol on the Property is prohibited. The County’s Administrative Abatement Order dated May 9, 2011 ordering Appellants to stop selling alcohol on the Property was properly issued and is affirmed for that reason.

Appellants’ argue the County zoning ordinance permitted sale of alcohol on the Property

under “Retail, incidental”, as an accessory use in the LI zone. This Board does not agree. The County zoning ordinance defines “accessory use” as:

The use of land, or of a building or portion thereof, which is incidental to, subordinate to, and customarily found in connection with the principal use of the land or building in which is located on the same lot with such principal use.
County Code § 190-208

The Planning Officer testified this was the only marina in the County selling alcohol for on-premises consumption. He also testified this Property did not offer meals in connection with on-premise alcohol consumption, that this was the only location in the County where that occurred.

Appellants’ offered evidence that Gateway Marina, located at the southern tip of the County, adjacent to the Frederick C. Malkus Bridge to Dorchester County, held a Class A license to sell beer and light wine for off-premises consumption only. Gateway Marina is in a Limited Commercial (LC) zone. The retail sale of alcohol is permitted outright in the LC zone and therefore Gateway Marina is not comparable, nor evidence of what is incidental to or customarily found in the LI zone. Appellants also offered evidence that Lowe’s Wharf, near Sherwood, held a Class F license for beer, light-wine and liquor, on-and-off sale, for hotels and restaurants. But Appellants’ operate neither a hotel nor restaurant on this Property. Lowe’s Wharf is also outside the LI Zone, and the activities there are not relevant to what is incidental to, subordinate to, and customarily found in the LI zone. Appellants’ claim of similarity between these two properties and the Property in question is unpersuasive. The Board rejects Appellants’ claim that the retail sale of alcohol for on-premises consumption is permitted as an accessory to the marina use on the Property.


For these reasons, the County's Administrative Abatement Order of May 9, 2011 ordering the Appellants to immediately cease the retail sale of alcohol on the Property in the County's LI zone located at 975 Port St, Easton, Maryland, was properly issued and should therefore be affirmed.

**HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,**

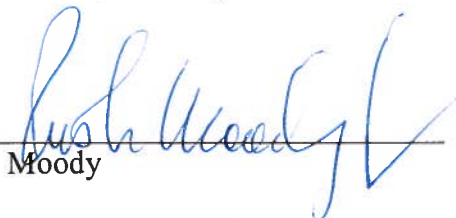
RESOLVED, that the Appeal of **EASTON POINT MARINA, INC., MEEHAN, LLC, KATHRYN MEEHAN, and W. LEE DENNY** is denied and the County's Administrative Abatement Order of May 9, 2011 ordering the Appellants to immediately cease the retail sale of alcohol on the property in the County's LI zone located at 975 Port Street, Easton, Maryland 21601, was properly issued and is hereby affirmed.

GIVEN OVER OUR HANDS, this 8th day of November, 2011.

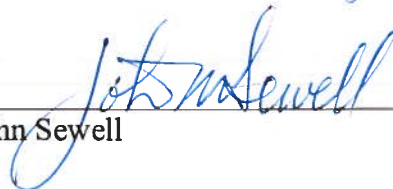
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